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SENATE

{ REPORT  
No. 2044 }

## EDWARD J. VOLTIN

JULY 1 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H. R. 4932]

The Committee on the Judiciary, to which was referred the bill (H. R. 4932) for the relief of Edward J. Voltin and others, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

#### AMENDMENTS

1. On page 1, line 7, strike the figure "\$4,784.14" and insert in lieu thereof the figure "\$2,284.14".
2. On page 1, line 8, strike the figure "\$842.46" and insert in lieu thereof the figure "\$94.66".
3. On page 1, line 9, strike the figure "\$22,605.94" and insert in lieu thereof the figure "\$15,805.94".
4. On page 1, line 11, strike the figure "\$14,208.76" and insert in lieu thereof the figure "\$5,515.73".
5. On page 2, line 2, strike the figure "\$18,810.28" and insert in lieu thereof the figure "\$13,798.68".
6. On page 2, line 3, following the semicolon, strike the word "to" and all down to and including the semicolon on page 2, line 4.
7. On page 2, line 9, beginning with the word "Such" strike all down to and including the period on page 2, line 13, and insert in lieu thereof the following:

Payment of such sums shall be in full settlement of all claims against the United States for property damage sustained by these claimants as a result of the crash of the United States Air Force airplane on Quincy Street, San Antonio, Texas, on July 11, 1948, such plane being operated by a member of the United States Air Force.

8. On page 2, line 15, strike the word "*Provided*" and, prior to the word "That", insert the following:

*Provided*, That no part of the amount provided for in this Act shall be subject to any claim for reimbursement to any insurance company or compensation insurance fund which may have paid any amount to the claimants herein by reason of the property damage incurred: *And provided, further*.

9. On page 2, line 7, strike the word "and".

10. On page 2, line 9, following the word "Texas", strike the period and insert the following:

and to pay Mrs. W. E. Deal, Jr., of Los Almos, New Mexico, the sum of \$1,209.30.

#### PURPOSE OF THE AMENDMENTS

The purpose of the proposed amendments numbered 1 through 6 is to eliminate the payment to the named claimants of sums which they already have received through insurance on the property destroyed or damaged in this accident. The purpose of the proposed amendment numbered 8 is to prevent any insurance firm from asserting any claim to any part of the sums awarded to the claimants. The purpose of the proposed amendment numbered 7 is to protect the United States from the possible assertion of other claims for property damage by these persons or their legal successors in interest. The purpose of the proposed amendments numbered 9 and 10 is to reimburse another claimant whose property was destroyed in this same accident.

#### PURPOSE

The purpose of the proposed legislation as amended is to pay certain sums to claimants for property damage sustained as the result of an accident involving a United States Air Force airplane in San Antonio, Tex., on July 10, 1948.

#### STATEMENT

At approximately midnight on July 10, 1948, an aviation cadet took an AT-6 type aircraft from the west side of the Randolph Air Force Base without authority and on a personal mission. He piloted the plane over the city of San Antonio, Tex., at a low altitude and the plane ultimately crashed into a two-story frame house at 611 Quincy Street. The aviation cadet and a tenant in the house at 609 Quincy Street were killed in the accident and the property nearby was destroyed and damaged.

The claimants in seven of the above-named bills have filed suits under the Federal Tort Claims Act in the United States district court for the damage sustained. Two others have filed administrative claims. In each case where suit was filed, judgment has been rendered in favor of the United States on the ground that the aviation cadet was not acting within the scope of his employment at the time of the crash and was flying the plane without authority. The judgments were sustained on appeal. The administrative claims were disallowed by the Secretary of the Air Force on the same ground.

The question of the legal responsibility of the United States has been determined and the committee finds no fault with that determination. However, the Congress in determining whether to grant compensation through the medium of private legislation is not limited

to a legal determination of the rights of the claimant. On many occasions the Congress has examined certain equitable considerations and, when Congress has deemed those equitable considerations sufficient, has enacted legislation for the relief of such claimants. The committee considers this to be such a measure. The evidence establishes that the damages sustained by the claimants enumerated in this legislation was in no way caused by any fault or negligence on their part. Primary responsibility, of course, rests upon the aviation cadet who took the plane without authority on a frolic of his own. However, it is difficult for the committee to understand how this aviation cadet could, without dereliction on the part of some person responsible for the security of these planes, procure an airplane as he did. An airplane is a dangerous instrumentality in the hands of a reckless individual, and adequate precautions should certainly be undertaken to prevent the taking of aircraft by personnel without authority.

The committee has on some occasions made awards to individuals who suffered injury because of the negligent operation of a vehicle which had been procured without authority, on the basis that there had been prior negligence on the part of military authorities in permitting the vehicle to be taken. (H. R. 1874, 81st Cong., 2d sess. S. Rep. 2354). This is but another application of that principle.

The committee therefore recommends favorable consideration of this legislation.

Attached to this report are two letters from the Assistant Secretary of the Air Force relative to the instant bill.

DEPARTMENT OF THE AIR FORCE,  
Washington, October 15, 1951.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: I refer to your request for a report on H. R. 4932, 4933, 4934, 4935, 4936, 4937, 5090, 5091, and 5299, bills for the relief of Edward J. Voltin et al., L. F. Osterberg, Mrs. Carolyn King, Carol King, Dr. R. L. Jacobs and wife, Mrs. Annie T. Haile et al., Mrs. Ruth M. Auth, Mrs. Richard L. Grayless, and Mrs. Emma Geneva Burke, respectively.

The purpose of these bills is to authorize and direct the Secretary of the Treasury to pay to the claimants named therein the stated various sums of property damage resulting from the crash of an Air Force aircraft on Quincy Street in San Antonio, Tex., on July 11, 1948.

At approximately midnight on July 10, 1948, an AT-6 type aircraft was taken from the west side of Randolph Air Force Base by an aviation cadet without authority and on a mission of his own. The plane flew over San Antonio at a low altitude and finally crashed into a two-story frame house at 611 Quincy Street. The aviation cadet and a tenant in the house at 609 East Quincy Street were killed and property nearby was destroyed and damaged.

The claimants in seven of the above-named bills have filed suits under the Federal Tort Claims Act in the United States district court for the damage sustained. The other two have filed administrative claims. In each case where suit was filed, judgment has been rendered in favor of the United States on the ground that the aviation cadet was not acting within the scope of his employment at the time of the crash and was flying the plane without authority. The judgments were sustained on appeal. The administrative claims were disallowed by the Secretary of the Air Force on the same ground.

The evidence establishes that the damage sustained by the claimants named in the foregoing bills was in no way caused by any fault or negligence on their part. The damage was caused solely by the negligence of the aviation cadet, who took the plane without authority on a frolic of his own. It has been established that the United States is not legally responsible in this matter and the Department of the Air Force does not desire to make any recommendation with respect to the enactment of the legislation. This is considered to be a matter solely within the discretion of the Congress.

In the event that the Congress favorably considers these bills, the Air Force makes comment and recommendations with respect to each case as follows:

H. R. 4932 provides for the payment to Edward J. Voltin an wife, Tecla Voltin, daughters, Paula Voltin Sansom and Jacqueline Voltin, the sum of \$5,980.85 for property damage sustained as the result of the crash.

Mr. Voltin and family resided in the house located at 611 East Quincy Street, which was owned by Mrs. J. H. (Annie T.) Haile. The aircraft crashed into the house which was occupied by Mr. Voltin and his family, and they were forced to leave the burning house without saving any of their personal or household property. Mr. Voltin lists as items of damage, added living expenses \$357, medical expenses due to shock \$187.95, and added rent \$227.50. It is recommended that the added living expenses be allowed; however, this Department recommends against the allowance of the items for medical expenses and added rent. Shock is not an item of damage where there is no evidence of physical injury, and the added rent is not considered to be a proper item of damage. Mr. Voltin lists his personal property at the apparent purchase price and deducts no depreciation. It is, therefore, recommended that a 15 percent depreciation be made. This would reduce the amount stated in H. R. 4932 to \$4,784.14.

Mr. Voltin recovered \$2,500 under the terms of an insurance policy with the State Farm Insurance Co. of Bloomington, Ill. The company would be subrogated to that extent.

H. R. 4933 provides for the payment to Mr. L. F. Osterberg the sum of \$1,051.10 for the property damage arising out of the accident.

Mr. Osterberg had his personal property stored in the house of Mr. Edward J. Voltin at 611 East Quincy Street. When Mr. Voltin's house was destroyed by the crash and resulting fire, Mr. Osterberg's property was destroyed. Mr. Osterberg submitted a property list which shows certain new items valued at \$310.15. It is recommended that this amount be allowed in full. A picture was listed with the value of \$350. Mr. Osterberg's insurance company allowed him \$200 for the picture and this amount is recommended. It is considered that the remainder of the property should be depreciated at the rate of 15 percent. This would reduce the total amount to \$842.46. Mr. Osterberg recovered the sum of \$747.80 under the terms of an insurance policy with the Trinity Universal Insurance Co. of Dallas, Tex., and that company would be subrogated to that extent.

H. R. 4934 provides for the payment of \$25,178.67 to Mrs. Carolyn H. King for property damage, both real and personal, sustained when the house owned by Mrs. King and her late husband was destroyed by the plane crash.

Mrs. King, and her now deceased husband, Henry C. King, were joint owners of the property located at 607 East Quincy Street. Mr. King, an invalid, had to be carried from the house and there was no time to save any of the personal or household property before the house was destroyed. Neither Mr. nor Mrs. King received personal injury other than possible shock. The King residence, which was totally destroyed, was estimated to have a market value of \$12,000, excluding the lot, at the time of its destruction. Mrs. King listed her personal property loss in the amount of \$12,813.67. In her property list Mrs. King shows the purchase price, the value placed on the property at the time of loss and the number of months in use. In some instances a slight depreciation or appreciation is shown between the purchase price and the value when lost. The number of months in use extend from 1 month to 30 and 35 years. A 20-percent depreciation is recommended in this case in view of the long length of service. This Department recommends that an amount not in excess of \$10,250.94 plus the sum of \$355 for cleaning up the debris be considered for Mrs. King's personal property. The Air Force is of the opinion that the amount of \$22,605.94 would be a fair and reasonable payment for the damage sustained by Mrs. King.

The King residence and contents were insured by the American Central Insurance Co. and the Star Insurance Co. of America, New York, N. Y. Mrs. King received \$3,000 for the loss of personal property and \$3,800 for the loss of the house. The afore-mentioned insurance companies would be subrogated to the extent of the payments to Mrs. King.

H. R. 4935 provides for the payment to Miss Carol King the sum of \$2,398.15 for property damage sustained by her as a result of the accident.

Miss King, the daughter of Mr. Henry C. King and Mrs. Carolyn H. King, made her home with her parents at 607 East Quincy Street. Miss King aided in getting her invalid father safely removed from the burning house, but was unable to save any personal or household property. Miss King's property loss amounted to \$2,770.68 at the time of acquisition. A 15-percent depreciation is considered to be appropriate. Accordingly, it is recommended that an amount



not exceeding \$2,355.08 be considered for the relief of Miss King. There is no information available in this Department as to any insurance which Miss King might have had on her personal property.

H. R. 4936 provides for the payment to Dr. R. L. Jacobs and wife, Claudia Jacobs, the sum of \$17,420.71, for property damage resulting from the crash of the aircraft.

Dr. and Mrs. Jacobs were the owners of a one-story frame dwelling house located at 615 East Quincy Street, which was almost totally destroyed. The contents of the house were completely lost. The property estimate for new furnishings for the Jacobs' home amounts to \$2,010.30. A 15-percent deduction for service received on previous furnishings is considered fair and reasonable. This would reduce the personal property estimate to \$1,708.76. The house was estimated to be worth \$16,000 prior to the fire and it had a \$3,500 valuation after the fire, which makes a loss of \$12,500. It is, therefore, recommended that a total amount not in excess of \$14,208.76 be considered for the damages sustained by Dr. and Mrs. Jacobs. The Jacobs' house and contents were insured by the Western Fire Insurance Co. of Atlanta, Ga. Dr. Jacobs received \$1,213.03 for loss of personal property, \$480 for rental insurance, and \$7,000 for loss of the house. The insurance company would be subrogated to that extent out of any award received by Dr. Jacobs.

H. R. 4937 provides for the payment to Mrs. Annie T. Haile and Mrs. Evelyn Peyton the sum of \$22,550 for property damage, both real and personal, arising out of the same crash.

At the time of the accident Mrs. Haile owned a life estate in the real property located at 611 East Quincy Street and Mrs. Peyton was vested with the remainder. Two real-estate appraisers valued the real property of Mrs. Haile at approximately \$18,250, including the lot. These estimates were based on the present-day inflated market rather than the cost of the building. The building was totally destroyed; however, the lot was not destroyed by reason of the fire, and a salvage of the lot in the amount of \$2,500 would be reasonable based on the total estimate of \$18,250. The real property would then show a loss of \$15,750. Mrs. Haile listed her personal property in the amount of \$3,950.35. In her list she shows the purchase price and the number of months in use. The number of months in use extend from 4 months to 20 years. She claims the purchase price for each item and makes no depreciation for the months of service. A 20 percent depreciation is recommended in this case due to the great length of service. An amount not in excess of \$3,160.28 is recommended as fair consideration for the loss of Mrs. Haile's personal property. This Department is of the opinion that the sum of \$18,810.28 would be fair and reasonable for the damage sustained by Mrs. Haile and Mrs. Peyton.

The Providence Washington Insurance Co. of Providence, R. I., paid to the estate of J. H. Haile the amount of \$3,505.27 for the damage to the dwelling house, and the same company paid to Mrs. Haile the amount of \$1,506.33 for damage to her personal property. The insurance company would be subrogated to that extent.

H. R. 5090 provides for the payment to Mrs. Ruth M. Auth (formerly Miss Ruth Moore) the sum of \$511.60 for property damage arising out of the crash.

Mrs. Auth was a tenant in the house owned by Dr. Jacobs located at 615 East Quincy Street. Mrs. Auth listed the purchase price of her personal property in the amount of \$532.51. It is recommended that the purchase price of Mrs. Auth's property be depreciated by 15 percent, which reduces the amount to \$452.64. This Department has no information as to insurance which Mrs. Auth might have carried on her property.

H. R. 5091 provides for the payment to Mrs. Richard L. Grayless (formerly Miss Dorothy Virginia Coyne) the sum of \$728.19 for property damage sustained when her residence was destroyed by fire following the same crash.

Mrs. Grayless was a tenant in the same house as Mrs. Auth. Mrs. Grayless sustained a loss of personal property listed by her in the original amount of \$782.61. It is recommended that this amount be reduced by 15 percent for depreciation, which leaves a total not to exceed \$665.22. The records of this Department do not reveal any information with respect to insurance which Mrs. Grayless might have had.

H. R. 5299 provides for the payment to Mrs. Emma Geneva Burke the sum of \$49.34 for property damage resulting from the crash of the aircraft.

Mrs. Burke's house, located at 617-619 East Quincy Street, was damaged by heat from the burning buildings, which were set fire by crash of the aircraft, and by water used in fighting the fire. It is the opinion of this Department that the

sum of \$549.34 would constitute a fair and reasonable settlement for the property damage sustained by the claimant.

Mrs. Burke recovered the sum of \$549.34 under the terms of an insurance policy with the Hardware Dealers Mutual Fire Insurance Co. of Stevens Point, Wis., and the company would be subrogated for the full amount of the award proposed by H. R. 5299.

The Bureau of the Budget, while interposing no objection to the submission of this report, has advised that it is of the opinion that the facts and circumstances surrounding the losses in question fully warrant awards to the named claimants in the amount recommended for each in this report.

Sincerely yours,

EUGENE M. ZUCKERT,  
*Assistant Secretary of the Air Force.*

DEPARTMENT OF THE AIR FORCE,  
*Washington, October 10, 1951.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: I refer to your request for a report on H. R. 4872, 3873, 4874, and 4875, bills for the relief of Mrs. Rosina Fowler, Mrs. Mary E. Blair and her son, Sidney J. Blair, Mrs. Beulah C. King, and Mrs. Marie J. Pelt, respectively.

The purpose of these bills is to authorize and direct the Secretary of the Treasury to pay to the claimants named therein the stated various sums for property damage resulting from the crash of an Air Force aircraft on Quincy Street in San Antonio, Tex., on July 11, 1948.

At approximately midnight on July 10, 1948, an AT-6 type aircraft was taken from the west side of Randolph Air Force base by an aviation cadet without authority and on a mission of his own. The plane flew over San Antonio at a low altitude and finally crashed into a two-story frame house at 611 Quincy Street. The aviation cadet and a tenant in the house at 609 East Quincy Street were killed and property nearby was destroyed and damaged.

The claimants in each of the above-named bills have filed suits under the Federal Tort Claims Act in the United States district court for the damage sustained. In each case judgment has been rendered in favor of the United States on the ground that the aviation cadet was not acting within the scope of his employment at the time of the crash and was flying the plane without authority. These judgments were sustained on appeal.

The evidence establishes that the damage sustained by the claimants named in the foregoing bills was in no way caused by any fault or negligence on their part. The damage was caused solely by the negligence of the aviation cadet, who took the plane without authority on a mission of his own. It has been established that the United States is not legally responsible in this matter and the Department of the Air Force does not desire to make any recommendation with respect to the enactment of the legislation. This is considered to be a matter solely within the discretion of the Congress.

In the event that the Congress favorably considers these bills, the Air Force makes comment and recommendations with respect to each case as follows:

H. R. 4872 provides for the payment to Mrs. Rosina Fowler, the sum of \$2,144.79 for property damages sustained by her due to the crash of the aircraft. Mrs. Fowler who is past 80 years of age, was a tenant in the house located at 615 East Quincy Street, which belonged to Dr. and Mrs. Raemond L. Jacobs. This house caught fire and was destroyed. Mrs. Fowler was carried to safety without any personal injuries; however, her personal and household property was destroyed. While the records available to this Department do not include a property listed for Mrs. Fowler, the sum of \$2,144.79 as stated in H. R. 4872 is believed to be a fair and reasonable amount for her personal and household property.

H. R. 4873 provides for the payment of \$352.30 to Mrs. Mary C. Blair and her son, Sidney J. Blair, for property damage sustained as a result of the crash. Mrs. Blair's house at 610 East Quincy Street is across the street from the scene of the crash and the damage to her house was caused by the fire and heat. The amount of \$352.30 is considered to be fair and reasonable, and an estimate substantiating the cost of repairs is a part of the record.

H. R. 4874 provides for the payment to Mrs. Beulah C. King the sum of \$8,242.14 for property damage sustained by her. The plane crashed into the house next door to the house occupied by Mrs. King and others located at 609 East Quincy Street. Mrs. King did not own the house in which she lived, which was completely destroyed; however, she lost all of her personal property. It is believed that the property list submitted by Mrs. King indicates the purchase price; therefore, this Department is of the opinion that her property should be reasonably depreciated on the basis of service. It is recommended that the value of the property, as submitted by Mrs. King, be depreciated by 15 percent for the service she received from it. This would reduce the amount stated in H. R. 4874 to \$7,005.82.

H. R. 4875 provides for the payment to Mrs. Marie J. Pelt the sum of \$2,486 for damages sustained by her as a result of the same crash. Mrs. Pelt was away from her quarters the entire week end the loss occurred and she had no opportunity to salvage any of her property. It is believed that the property list submitted by Mrs. Pelt also indicates the purchase price. Accordingly, this Department considers that her property should be depreciated on the basis of service. As in the case of Mrs. King, it is recommended that the value of the property, as submitted by Mrs. Pelt, be depreciated by 15 percent for the service she received from it. This would reduce the amount stated in H. R. 4875 to \$2,113.10.

The records available in this Department do not reveal any information as to any insurance that the above-named claimants may have had on their property.

The Bureau of the Budget, while interposing no objection to the submission of this report, has advised that it is of the opinion that the facts and circumstances surrounding the losses in question fully warrant awards to the named claimants in the amount recommended for each in this report.

Sincerely yours,

EUGENE M. ZUCKERT,  
*Assistant Secretary of the Air Force.*

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